Langdale Forest Products Company *and* United Food & Commercial Workers Union, Local 1996, AFL–CIO. Cases 12–CA–18427 and 12–CA–18505

August 27, 2001

DECISION AND ORDER

BY CHAIRMAN HURTGEN AND MEMBERS LIEBMAN AND TRUESDALE

On January 15, 1998, Administrative Law Judge Keltner W. Locke issued the attached decision. The General Counsel and the Charging Party each filed exceptions and a supporting brief, and the Respondent filed an answering brief.[1]

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs[2] and has decided to affirm the judge's rulings, findings,[3] and conclusions[4] and to adopt the recommended Order.

We adopt the judge's conclusion that the Respondent did not violate Section 8(a)(1) by impliedly promising employees that they would receive better wages and benefits if they abandoned their support for the Union. The Respondent's statements challenged by the General Counsel and our dissenting colleague were, individually and collectively, lawful expressions of opinion during a decertification election campaign.

An employer has a right to compare wages and benefits at its nonunion facilities with those received at its unionized locations. The Board has repeatedly held that providing such information is not unlawful. E.g., *TCI Cablevision of Washington*, 329 NLRB 700 (1999); *Viacom Cablevision*, 267 NLRB 1141 (1983). Furthermore, it is lawful for an employer to state its opinion, based on such comparison, that employees would be better off without a union. Absent accompanying promises or threats, the Board normally treats such comments as statements of opinion protected by 8(c)'s free speech proviso. *Thomas Industries*, 255 NLRB 646 (1981), enf. denied on other grounds 687 F.2d 863 (6th Cir. 1982); *S. S. Kresge Co.*, 197 NLRB 1011, 1012 (1972). Finally, it is well settled that, absent threats or promise of benefit, an employer is entitled to explain the advantages and disadvantages of collective bargaining to its employees, in an effort to convince them that they would be better off without a union. *Custom Window Extrusions*, 314 NLRB 850 (1994); *Fern Terrace Lodge*, 297 NLRB 8 (1989).

Consistent with the foregoing precedent, we agree with the judge that the Respondent's August 30 newsletter and its antecedent speeches on August 28–30 to employees were lawful. While castigating the newsletter and speeches as an artful conveyance of an implicit unlawful promise of benefits in order to secure the Union's ouster, the dissent itself engages in an artful, but ultimately unpersuasive, paragraph-by-paragraph parsing of the Respondent's language. For example, the dissent finds an implied promise in the Respondent's express disclaimer of the intent to make any promises. It infers a promise to pay employees more, in the absence of a collective-bargaining representative, from an accurate description of the statutory obligation to bargain instead of taking immediate unilateral action. It suggests illegality in an accurate comparison of the wage rate history of the Respondent's unionized plant with its nonunion plant and in an apparently accurate description of the Union's willingness in past negotiations to accept below-average wages. Finally, while not directly challenging the judge's view that there were no unlawful statements in

[1] In light of our decision to adopt the administrative law judge's recommended Order dismissing the complaint, we deny as moot the Respondent's Motion to Dismiss General Counsel's Complaint and Exceptions to the Administrative Law Judge's Decision.

[2] The Respondent has requested oral argument. The request is denied as the record, exceptions, and briefs adequately present the issues and the positions of the parties.

[3] The General Counsel and the Charging Party have excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[4] In *Levitz Furniture Co. of the Pacific*, 333 NLRB No. 105 (2001), which issued subsequent to the judge's decision, the Board overruled *Celanese Corp. of America*, 95 NLRB 664 (1951), and its progeny insofar as they permitted an employer to withdraw recognition from an incumbent union on the basis of a good-faith doubt of the union's continued majority status. The *Levitz* Board held that "an employer may unilaterally withdraw recognition from an incumbent union only where the union has actually lost the support of the majority of the bargaining unit employees." Id., slip op. at 1. However, the Board also held that its analysis and conclusions in that case would only be applied prospectively; "all pending cases involving withdrawals of recognition [will be decided] under existing law: the 'good-faith uncertainty' standard as explicated by the Supreme Court" in *Allentown Mack Sales & Service v. NLRB*, 522 U.S. 359 (1998). 333 No. 105, slip op. at 12. Here, we affirm the judge's conclusion that the Respondent lawfully refused to bargain with and prospectively withdrew recognition from the Union. We find that the Respondent withdrew recognition in reliance on a good-faith uncertainty, based on objective evidence, that the Union continued to have majority support in the bargaining unit.

the Respondent's speeches, the dissent nevertheless finds that these speeches provide further context for understanding the unlawful promises allegedly implied in the newsletter.

In sum, the dissent's approach signals a fundamental unwillingness to accept the principle that an employer has a right to make comparisons or descriptions that are unfavorable to an incumbent union during a decertification election campaign. The cases cited by the dissent are readily distinguishable. In *Westminster Community Hospital*, 221 NLRB 185 (1975), as in this case, the respondent displayed comparative wage charts demonstrating that the union had been unable to negotiate wages and benefits equal to those enjoyed by employees at the respondent's nonunion facilities. Unlike in the present case, however, the respondent in *Westminster* explicitly threatened to limit any wage increases and threatened further to negotiate a "lousy contract [and] shove it down your throat" if the employees failed to reject the union. Other cases cited by the dissent include explicit promises of wage increases or enhancement of specific benefits if employees rejected the union. *Marvyn's*, 240 NLRB 54, 56–58 (1979) (employer assured part-time pregnant employees concerned about eligibility for health insurance, "your baby will be taken care of" if the union is rejected*; Michigan Products*, 236 NLRB 1143, 1146 (1978) (respondent promised to contribute to profit-sharing plan for employees if they were no longer covered by a collective-bargaining agreement and to increase wages by 50 cents); *Lutheran Retirement Village*, 315 NLRB 103 (1994) (employer told assembled employees that pension benefits, which union had been unable to negotiate, were under active consideration); *Bakersfield Memorial Hospital*, 315 NLRB 596, 600 (1994) (respondent solicited employee grievances and made express and implied promises to remedy them if union voted out).

The Respondent here did not threaten to bargain in bad faith or to retaliate against employees if they failed to reject the Union. It expressly disclaimed the ability to promise improvements in wages and benefits. It accurately recited historical facts and expressed its opinion that employees would be better off without the Union. Accordingly, we agree with the judge that under the circumstances of this case neither the newsletter nor the Respondent's speeches violated Section 8(a)(1) of the Act.

ORDER

The recommended Order of the administrative law judge is adopted and the complaint is dismissed.

Dated, Washington, D.C. August 27, 2001

Peter J. Hurtgen, Chairman

John C. Truesdale, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

MEMBER LIEBMAN, dissenting in part.

Contrary to my colleagues, I would reverse the judge and find that the "Notice to Employees" appearing in the company newsletter, *The Whispering Pines*, and signed by the Respondent's general manager, James Langdale, implicitly promised employees that they would receive better wages and benefits if they voted to decertify the Union. While artfully attempting to skirt the proscriptions of the law, the article nonetheless clearly conveyed its illegal message to employees: abandon the Union and the company will make it worth your while. I therefore dissent and would find that the "Notice to Employees" unlawfully interfered with employees' Section 7 rights, in violation of Section 8(a)(1) of the Act. I would also find that this violation was sufficient to taint the anti-union employee petitions on which the Respondent later relied in withdrawing recognition from the Union.

The Union (or its predecessor) had represented the Respondent's production and maintenance employees since 1964. On August 26, 1996,[1] an employee filed a decertification petition. On August 28, 29, and 30, General Manager Langdale held a number of meetings with employees. On each occasion, Langdale read from the same prepared speech in which he addressed various workplace concerns and set forth his views on the upcoming decertification election.[2] At the same time, Langdale

[1] Dates hereafter refer to 1996.

[2] The speech is set forth in its entirety in the judge's decision.

signed a "No Cut Guarantee" which assured employees that they would not lose wages, benefits, or pensions if they voted out the Union.[3]

On August 30, the Respondent mailed employees a copy of its newsletter, the *Whispering Pines*. In addition to reiterating the "No Cut Guarantee," the newsletter contained the following item:

NOTICE TO EMPLOYEES

> I have been asked whether we will make improvements if the union is voted out. I can't make any promises about that during this election process because that would be illegal. Even though I have strong feelings about this, because of the law I have to be very careful about what to say.
>
> If there is no union, the law would allow us to make improvements without first having to bargain with the union about those improvements. There have been several times during this contract where we wanted to give wage increases immediately. Instead, we had to go through the negotiation process with the union before we could put those increases into effect. Keep in mind that it was the *Company* that told the union we wanted to make increases.
>
> Without a union, there is no requirement to bargain before we give an increase. Again, I can't promise you that we will grant benefit and wage increases if the union is voted out. However, based on the small increases negotiated by UFCW here, compared with the larger increases given in our other non-union facilities, you certainly would have been better off here without the union[.]
>
> I can tell you that no reductions will be made if you get rid of the union. Also, since the union has no power to deliver wage and benefit increases, the UFCW can make you all sorts of promises. If you have any questions, please let me know. Thank you. [GC Exh. 22(b). Emphasis in original.]

The judge states that the "Notice" contains no promise of benefit or threat of reprisal or force, and is therefore "neither an unfair labor practice nor evidence of an unfair labor practice." Emphasizing the Respondent's disclaimer of any promises, "because that would be illegal," the judge concludes, without citation to any supporting precedent, that the complaint allegations are not justified.

Contrary to my colleagues, I would reverse the judge, who failed to appreciate how the "Notice" implicitly—indeed, artfully—conveys a clear message to its intended audience that continued union representation was not to their advantage. Even if its explicit language seems innocent at first glance, the "Notice" let employees know that the Respondent would not only maintain the status quo if they abandon union representation, but would also make improvements in wages and benefits.

The subject of the "Notice" is improvements in wages and benefits. The overt message is that were it not for outside constraints, things would be better. The underlying message is that if, and when, the Respondent is freed of these hindrances, it will make improvements.

In the first paragraph, the Respondent cites legal constraints for its inability to respond to questions about possible improvements. At the same time, the text highlights that if the Respondent *could* promise improvements, it *would* do so. Thus, Langdale states, "Even though I have strong feelings about this, because of the law I have to be very careful about what to say." The Respondent's desire to make a promise ("strong feelings") is plain, but the law prevents an explicit promise ("I have to be very careful"). The result—as the readers of the "Notice" surely understood—is an implicit promise.

In the second paragraph, the Respondent blames the Union for stifling wage rates and delaying the implementation of raises: "[W]e wanted to give wage increases immediately. Instead, we had to go through the negotiation process." Here, in less subtle language than the first paragraph, the Respondent implies that it stands willing to pay employees more, once the obstacles of collective bargaining are removed.

Disparagement of the Union and the collective-bargaining process continues in the third paragraph. Comparing the compensation rates of this plant with its nonunion facilities (but again noting the prohibition against promises), the Respondent states, "[Y]ou certainly would have been better off here without the union." Thus, the Respondent suggests again that once the Union is gone, the Respondent will provide the "larger increases" enjoyed at the nonunion plants.[4]

In the final paragraph, the Respondent adds a twist to its message. In the course of promising not to reduce benefits, the Respondent points out that precisely because the Union cannot deliver improvements, it *can* make promises. The clear implication is that the Respondent can and will deliver improvements, even

[3] The judge rejected the General Counsel's contention that the speech and guarantee violated Sec. 8(a)(1). He determined that the speech's content was protected by Sec. 8 (c) of the Act and that its message was too vague to constitute a promise of benefit for rejecting the Union. He further determined that the guarantee was merely responsive to union claims rather than assertions of the Respondent's future plans. Accordingly, he dismissed these complaint allegations.

[4] While giving lip service once again in this paragraph to the prohibition against making promises, the Respondent nevertheless manages to hold out the enticement of better days to come.

though it cannot promise them. In context, of course, the words do convey a promise of improvements.

The rhetoric of the "Notice" is artful, to be sure. But its message remains unlawful. Carefully disclaiming a promise to make improvements, while indicating a desire to make a promise and act on it; holding the Union responsible for employees not getting raises, while suggesting that raises will be forthcoming once the Union is gone; noting the ability of the Union to make promises but not to make improvements, while promising that the Company will make no reductions if the Union is voted out—taken together, these rhetorical devices undeniably amount to the promise of benefit designed to encourage disaffection from the Union. See, e.g., *Mervyn's*, 240 NLRB 54, 56–58 (1979); *West-minster Community Hospital*, 221 NLRB 185 (1975).

The nature of the "Notice" is even clearer when Langdale's speeches are considered. Whether or not they violated Section 8(a)(1) in and of themselves, the speeches certainly helped create the context in which the "Notice" would be understood. There, Langdale said that the Respondent would "probably save more money by keeping the union in here and continuing to drive a hard bargain." The clear implication would be repeated in the "Notice": wages and benefits will go up, if and when the Union is gone. At that point, as the speeches observed, there would be "a team with a real family atmosphere." The Board has not hesitated to find an implied promise in such a message. See, e.g., *Grede Plastics*, 219 NLRB 592, 593 (1975).

This is not a case where an employer simply compared benefits at its organized and unorganized facilities, while emphasizing that it could make no promises. Compare, *TCI Cablevision*, 329 NLRB 700 (1999). The respondent clearly communicated its desire to make an explicit promise and to act on it, identifying the law and the union as obstacles to this desire, and pointedly distinguishing its own capacities from those of the union. Of course, "[i]t is immaterial that an employer professes that he cannot make any promises, if in fact he expressly or impliedly indicates that specific benefits will be granted." *Michigan Products*, 236 NLRB 1143, 1146 (1978). See, e.g., *Lutheran Retirement Village*, 315 NLRB 103 (1994). Here, indeed, the disclaimer of any promises was a means to convey a promise. Finally, the fact that the Respondent's promises were implied rather than express makes them no less pernicious. See *Bakersfield Memorial Hospital*, 315 NLRB 596, 600 (1994).

Despite the majority's contention, I do agree that an employer is entitled: to compare the wages and benefits at its nonunion facilities with those at its unionized locations; to state an opinion, based on that comparison, that employees are better off without a union; and to explain the advantages and disadvantages of collective bargaining to its employees, so long as these statements are not accompanied by threats or promises. The majority and I differ over whether the Respondent here made a promise. I believe it did—carefully, indeed cleverly, but still unlawfully—by presenting the Union as the only obstacle between employees and higher wages. For purposes of the Act, of course, an implicit promise is no different than an explicit one, though it certainly represents the shrewder legal choice. It is a tribute to the Respondent's skill that it managed to convey its message to unit employees even while convincing my colleagues that it did not.

Accordingly, I find that the Respondent's "Notice to Employees" unlawfully interfered with employees' Section 7 rights in violation of Section 8(a)(1) of the Act. Given its timing, nature, tendency to cause employee disaffection, and effect on employee morale, this violation, in turn, tainted the employee petitions that led the Respondent to withdraw recognition from the Union. See, e.g., *Bridgestone/Firestone, Inc.*, 332 NLRB No. 56, slip op. at 2 (2000). See generally *Master Slack Corp.*, 271 NLRB 78, 84 (1984) (identifying factors to be weighed in determining causal relationship between unfair labor practices and decertification petition). Thus, I would find that the Respondent also violated Section 8(a)(5) of the Act when it withdrew recognition from the Union.

Dated, Washington, D.C. August 27, 2001

Wilma B. Liebman, Member

NATIONAL LABOR RELATIONS BOARD

David S. Cohen, Esq., for the General Counsel.
W. Melvin Haas III, Esq. and Jeffery L. Thompson, Esq. (Haynsworth, Baldwin, Johnson & Harper), of Macon, Georgia, for the Respondent.
James D. Fagan, Esq. (Stanford, Fagan & Giolito), of Atlanta, Georgia, for the Charging Party.

DECISION

STATEMENT OF THE CASE

KELTNER W. LOCKE, Administrative Law Judge. In this case, the General Counsel of the National Labor Relations Board (the General Counsel or the Government and the Board) alleges that Langdale Forest Products Company (the Respondent or the Company) violated Section 8(a)(1) of the National Labor Relations Act (the Act) by encouraging employees to give up their representation by United Food & Commercial

Workers Union, Local 1996, AFL–CIO (the Union or the Charging Party). The General Counsel also alleges that the Respondent withdrew recognition from the Union in violation of Section 8(a)(5) and (1) of the Act, and further contends that even if the Company's actions did not violate existing law, the Board should overrule certain precedents and make the conduct illegal. I find the government has not proven its case, and recommend that the complaint be dismissed entirely.

I heard this case in Valdosta, Georgia, on February 18 and 19, 1997, and have considered the parties' posthearing briefs.[1]

The Facts

Respondent is a Georgia corporation engaged in the manufacture of utility poles and other lumber products. It admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the National Labor Relations Act (the Act).

The Respondent also admits, and I find, that the Union is a labor organization within the meaning of Section 2(5) of the Act. In June 1964, the Board certified the Union's predecessor as the exclusive collective-bargaining representative of a unit consisting of production and maintenance employees, including truckdrivers, employed at the Respondent's facility in Valdosta, Georgia.

The Respondent entered into successive collective-bargaining agreements with the Union or its predecessor, which covered the bargaining unit employees. The last of these agreements expired on November 21, 1996, at the end of its 3-year term.

Beginning in early July 1996, certain of Respondent's employees signed and got other employees to sign petition forms headed "WE, THE UNDERSIGNED EMPLOYEES OF LANGDALE FOREST PRODUCTS CO., NO LONGER WISH TO BE REPRESENTED BY THE UNION." Additionally, some employees signed individual cards or slips bearing this language, rather than a petition form. On August 26, 1996, employee Jerome Smith filed a decertification petition based upon this showing of interest.

The record does not establish that the Respondent initiated or sponsored such petitions, and the complaint does not allege that Respondent did. Similarly, there is no allegation that the Company granted paid time off to any employees so that they could circulate the petitions, or paid the expenses of such employees to do so. However, the complaint does allege that the Respondent solicited and encouraged its employees to sign such petitions. Those allegations will be discussed individually in chronological order.

A. The August 28–30, 1996 Speeches

Complaint[2] paragraphs 6(a), (b), and (c), respectively, allege that in meetings with employees during the period August 28, 1996, through August 30, 1996, Respondent's general manager, James Langdale, violated Section 8(a)(1) of the Act. Specifically, the complaint alleges Langdale impliedly promised to increase wages and improve benefits if employees ceased supporting the Union, solicited and encourage employees to sign a "disaffection petition" renouncing their support for the Union, and solicited and encouraged employees to resign from the Union and revoke their dues-checkoff authorizations.

During this 3-day time period, there were a number of meetings. At each, Langdale read the same prepared speech, which stated, in its entirety, as follows:

> Good to see everyone. I hope everyone knows me. I'm Jim Langdale. I've been your general manager for the past 8 months. Let me get right to the point. We received word yesterday that employees here have filed a petition to get rid of the UFCW union. Quite frankly, I'm real proud of you for doing this. I'm glad that many of you feel like me that we're better off without a union here now.
>
> Of course, most of you all know this union's been around here for a long time—as I understand it, for over thirty years. Heck, this union's been around here longer than I have been alive. I appreciate the fact, that over the years, several of our older employees have told me why this union came in here to begin with. We did some things in this company and around this part of the country to blacks I'm not proud of. It was wrong. I can understand why you all went after this union. Obviously at 24 years of age I wasn't around then—but my family was. We all take responsibility for the discrimination and the unfair treatment that took place. That certainly doesn't change anything—but I want you to know exactly how I feel.
>
> Secondly, I want you to know that I will not tolerate any discrimination now or in the future. All our older employees have made enormous contributions to our company over the years. You have worked long and hard in very difficult circumstances to make us successful. I pledge to you that I will never forget that. I consider this decertification petition as giving us a second chance. We can't change the past but we can do something about the future. It's a second chance for all of us as managers. As for me, I do not want to blow this chance.
>
> Let me talk about this decertification petition and what it means. You may know that our contract expires at the close of business on November 21, 1996. We have notified the union that even though we have a bargaining session scheduled for October the 9th, that it is our intent to terminate the agreement on the 22nd of November. Normally the NLRB will conduct an election within 45 days after the decertification petition is filed. That would mean we would have an election around the first or second week in October. About 6 or 7 weeks from today. We'll have plenty of time between now and then to give you the exact time and place of the election.
>
> In the meantime, we still have an obligation to bargain with the union over the contract that's in place. With a

[1] Respondent has moved to correct the transcript of the hearing. Additionally, I have found certain other typographical errors in the transcript. I order the transcript corrected in accordance with the changes set forth in app. B to this decision. Otherwise, I deny Respondent's motion. Respondent also moved to strike portions of the briefs filed by the General Counsel and the Charging Party. I deny this motion.

[2] The General Counsel amended the complaint orally at hearing. By "Complaint," I refer to the complaint as amended.

decertification petition filed there's a quirk in the law, that even though a decertification petition is filed, we still have to bargain with the union unless the company has been notified that more than 50% of the employees have signed the petition. If that occurs, then the company can withdraw from bargaining and withdraw recognition from the union. In other words, if you all give us more signatures so that you exceed the 50% mark the union will be gone. If this doesn't occur, any contract that would be reached in bargaining before the current contract expires on November the 21st would be null and void if you all voted the union out.

When we got notice of this petition we really had several options. Actually three choices. Our first choice was to use this decertification petition to cut a deal with the union. Last time the union was so afraid of not reaching a contract that they jumped on our first offer. At your expense, they saved us a lot of money in our last contract. So from a pure business standpoint—it's clear that the company could save money with the union. But there's more to this business than just money. Certainly we've got to make a profit. We feel you deserve a company that really cares about you and shows it. Our second choice was to be neutral and not do anything and let you make up your mind without any input from us. But our final choice—our third choice was to work as hard as we could at communicating our views and letting you know how we feel about this decision.

In any event, we expect the union to campaign hard and if we didn't do anything, then the union would be out there campaigning against our employees who worked so hard on this petition.

Speaking of union campaigning—I have received information that the union has been telling you that if you vote them out, the company is going to reduce your wages/benefits and pensions. That is an absolute lie. Let me state this as clearly as I can. If you vote the union out, we will not cut your wages and we will not take away any of your fringe benefits. The union is only trying to use scare tactics to frighten you into voting for them. Don't let them do that to you. Ignore their scare tactics. I feel so strongly about this —I'm going to put a guarantee in writing that we will not cut your wages or benefits.

In making this decision, we analyzed the pros and cons. Here's what we thought about. First, we know that a campaign will cost us money. Unfortunately, we'll have to pay those damn lawyers to make sure we do things right. Quite frankly, if I never have to deal with another lawyer or union representative I'll be happy—real happy. They drive me crazy. But we know, the union will try to file unfair labor practice charges and all that stuff, so we have to have an attorney. And of course it will take time and effort to work on this and take time away from our normal duties so it will be expensive to wage a campaign.

Second, there's no guarantee that the union will be voted out. That decision is y'alls. We certainly don't know for sure how it will turn out, so we could spend all this effort and money and y'all could still be stuck with this union here.

Third, as I said with the union in here we've been able to save a lot of money in negotiating our contract. As you know, wages and benefits have not increased much at all in the past several years. Certainly—significantly under the national average. Apparently the union has agreed to all of this because they've had no strength or don't care anymore. So getting the union out of here would not save us money. That's for sure, in fact we would probably save more money by keeping the union in here and continuing to drive a hard bargain. Now fourth, we know that the union is going to scream and raise all kind of hell if we fight them. So those are all the negatives.

On the other hand, we have a large number of employees who don't want this union in here. I know from talking with your managers and supervisors that they don't want the union in here. I sure know that I don't want the union in here. I'd like to see a new era begin where we are truly a family. Where we worked together as a team with a real family atmosphere of mutual respect and trust. I know as managers we have to earn your trust everyday. I understand that many of you would like to see what would happen here if there weren't a union. I think you deserve that chance and the chance to have a real family atmosphere.

I'm real excited about this myself and I'm committed to spending a lot of time over the next several weeks before this election to be able to talk with you in detail about what all of this means. As I told you earlier, we have told the union of our intention to terminate this agreement when it expires on November the 22nd. That means everything will go back on the table. Everything would be bargained for. Everything would be up for grabs. You all know in bargaining there is nothing certain.

With regard to the union I know many of you are paying dues to the union—spending money paying for them to represent you. That is your choice. It's your money. You've worked hard for it. I'm not going to tell you how to spend your money. If you want to pay it to the union—that's your business. On the other hand, many people have asked how they can get out of the union. Well if you have any questions about how to do that it's covered by the checkoff authorization on the last page of your contract—page 55, which requires you to give the company written notice of stopping your dues. Or you can just see personnel.

Other people have indicated that while they haven't paid union dues they may still vote for the union because they feel they need it as a security blanket. Perhaps they can't in their minds erase the memories of the past. Maybe they're concerned about whether they'll be treated fairly and maybe they're concerned that if the union's gone—they're not sure that the company will do right by them. Well, first of all you've got my word, for whatever it's worth to you, that we are going to do what's right. But more importantly, it would make no sense for us to make the decision to communicate to you our views against this

union—if we were not prepared to do what was right. We know it'll probably cost us more money this way but we feel you deserve it and we want to take responsibility for your future and be held accountable. We know that if we don't do what's right, then you can go get this union back here in a heartbeat. I think that's the best insurance you've got.

I don't think this union has represented you very well for at least the past 10 years. I think you know that. Their approach has been to sell you all out for some dues money.

Since I've been your general manager I see a change. I see us communicating and being honest with each other. That's the approach I want to have—that's the way I want to manage this plant. I want us working together without the interference of lawyers and union reps—just us—working together as a team. I don't like the approach we've taken with this union where we were out to just get the best deal we could for the company and basically the hell with our employees. I don't want to have that approach. I would like for us to say our employees have voted the union out—they fought for us and we need to fight for them. I'll commit to you that I'll do just that. Let's get rid of this union and let's get back to working together as a family. Thanks. [GC Exh. 21.][3]

Based upon my observations of the witnesses at hearing, I credit the of testimony James Hickman and James Langdale. That testimony establishes, and I find, that the speech was read verbatim.

Langdale also signed a "No Cut Guarantee," which stated, "I, Jim Langdale, *Guarantee* You, The Employees of Langdale Forest Products, That If You Vote The Union Out, Langdale Will Not Cut Your Wages And Will Not Take Away Any Of Your Benefits Or Pensions." (GC Exh. 22(a).)

As stated above, the complaint alleges that Langdale's statements interfered with, restrained, and coerced employees in the exercise of employees Section 7 rights, in violation of Section 8(a)(1) of the Act.[4] In determining whether these statements are unlawful, I must also follow Section 8(c) of the Act, which states, "The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act, if such expression contains no threat of reprisal or force or promise of benefits." 29 U.S.C. §158(c).

By its terms, Section 8(c) does not protect speech which contains a "threat of reprisal or force or promise of benefits." The statements at issue here do not contain any threat of reprisal or force, and the complaint does not allege any threat. However, the complaint does allege an implied promise of benefits.

The complaint does not state what specific words constituted the alleged unlawful implied promise of benefits. However, the speech includes the following candidates:

1. Langdale pledged he would never forget that employees had worked "long and hard and in very difficult circumstances to make us successful."

2. If employees voted the Union out, the Company would not cut wages or take away any fringe benefits.

3. Langdale pledged, "We are going to do what's right."

The first statement, Langdale's pledge never to forget the employees' hard work, does not mention employee wages or benefits. I find it too vague to constitute a promise of benefit within the meaning of Section 8(c). Moreover, this statement occurs in the context of an apology for racial discrimination of the past. It does not, on its face, promise any reward if employees rejected the Union.

The second statement, that the Company would not cut wages or take away fringe benefits if the employees voted out the Union, reinforced by Langdale's "No Cut Guarantee," certainly does say something about benefits. However, a statement that existing benefits will not be cut is different from a promise of new benefits.

Moreover, I find that Langdale gave this assurance because he had received reports that those favoring the Union were claiming that if the employees voted the Union out, the Company would cut wages and benefits. His speech itself places the "no cut" pledge in the context of such reports, which Langdale called "an absolute lie." I find that Langdale did not make an unlawful promise by assuring employees that existing benefits would not be cut.

Finally, there is Langdale's promise to "do what's right." The General Counsel contends that this statement constitutes a veiled promise to pay more wages or benefits if the Union is voted out. However, when the "do what's right" language is read in context, it conveys a wholly different message.

Langdale began his speech with an apology for racial discrimination of the past. He expressed the opinion that 30 years earlier, employees had selected the Union as protection against such invidious discrimination. He also suggested that some employees might still have lingering fears about how they would be treated if the Union were not there. Responding to those concerns, Langdale gave his word "that we are going to do what's right."

In this context, Langdale's "do what's right statement" simply promised that the Company would obey the law, which prohibits racial discrimination. Moreover, this statement did not suggest that the Company presently was discriminating and would stop if the Union were voted out. Rather, Langdale made it clear that he did not approve of what had happened in the past, and would not return to those practices. The "do what's right" statement, in this context, is a promise to obey the law, not an unlawful promise of benefits.

[3] The original text was all in capital letters. I have rendered it in capitals and lower case for ease of reading.

[4] Sec. 8(a)(1) makes it an unfair labor practice for an employer "to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7" of the Act. 29 U.S.C. §158(a)(1). Sec. 7 of the Act grants employees the "right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection," and also "the right to refrain from any or all of such activities." 29 U.S.C. §157.

In another context, Langdale referred to the Company taking responsibility and being held accountable for the employees' future, and added, "We know that if we don't do what's right, then you can go get this union back here in a heartbeat. I think that's the best insurance you've got." This statement also did not constitute a promise of benefits. Rather, it simply pointed out that if the Company didn't act in a manner satisfactory to the employees, they could select a union to represent them.

In sum, I find that neither Langdale's speech nor the "No Cut Guarantee" contained any threat or force or promise of benefit. Therefore, they do not constitute an unfair labor practice or evidence of an unfair labor practice. 29 U.S.C. §158(c).

B. Statement in Company Newsletter

Complaint paragraph 7 alleges that on August 30, 1996, in the *Whispering Pine* newsletter mailed to employees, the Respondent promised to increase wages and improve benefits if employees ceased supporting the Union. That newsletter included the following notice, which was signed by Langdale:

NOTICE TO EMPLOYEES

> I have been asked whether we will make improvements if the union is voted out. I can't make any promises about that during this election process because that would be illegal. Even though I have strong feelings about this, because of the law I have to be very careful about what to say.
>
> If there is no union, the law would allow us to make improvements without first having to bargain with the union about those improvements. There have been several times during this contract where we wanted to give wage increases immediately. Instead, we had to go through the negotiation process with the union before we could put those increases into effect. Keep in mind that it was the *Company* that told the union we wanted to make increases.
>
> Without a union, there is no requirement to bargain before we give an increase. Again, I can't promise you that we will grant benefit and wage increases if the union is voted out. However, based on the small increases negotiated by UFCW here, compared with the larger increases given in our other non-union facilities, you certainly would have been better off here without the union[.]
>
> I can tell you that no reductions will be made if you get rid of the union. Also, since the union has no power to deliver wage and benefit increases, the UFCW can make you all sorts of promises. If you have any questions, please let me know. Thank you.

(GC Exh. 22(b) (emphasis in original).)

This statement does not contain any promise of benefit. To the contrary, it expressly states "I can't make any promises. . .because that would be illegal." Additionally, it does not contain or constitute a threat or force, and therefore is neither an unfair labor practice nor evidence of an unfair labor practice. 29 U.S.C. §158(c). The allegations in complaint paragraph 7 are not justified, and I recommend they be dismissed.

C. The September 4–6, 1996 meetings

Complaint paragraphs 6(d) and (e) allege, respectively, that during meetings with employees conducted September 4, 1996, through September 6, 1996, Respondent, through General Manager Langdale, solicited and encouraged employees to resign from the Union and revoke their dues-checkoff authorizations, and impliedly promised to increase wages and improve benefits if employees ceased supporting the Union. Complaint paragraph 8 alleges that during meetings with employees September 4, 1996, through September 6, 1996, Respondent, through Technical Director James Hickman, impliedly promised to increase wages and improve benefits if employees ceased supporting the Union.

To support these allegations, the General Counsel adduced testimony from Lawrence Griffith, an employee who attended one of the meetings. According to Griffith, Langdale discussed the differences in pay rates earned by the Respondent's employees and the rates earned at certain other companies. Griffith testified that Langdale, "said the [employees at] other companies, their pay was a little higher because they were non-Union and because we were Union, that's why we had a lower pay. . .I remember [Langdale] had said that on the [decertification] petition they had 200 percent, they had pretty close to 200 percent and he would be happy to see it get to 200 percent." (Tr. 292–293.)

I do not credit Griffith. Langdale impressed me as being precise and methodical, and it seems unlikely that he would use the extravagant phrase "200 percent." Additionally, although Griffith testified that about 12 people were in the room when Langdale made the "200 percent" statement, no witness corroborated this testimony.[5]

Based on the testimony of Langdale and Hickman, whom I credit, I find that they did not promise to raise wages or improve benefits if employees ceased supporting the Union.

With respect to the allegation that General Manager Langdale solicited and encouraged employees to resign from the Union and revoke their dues-checkoff authorizations, the evidence does not establish that he made any statement about resigning union membership or revoking checkoff authorization in the speeches he gave on September 4 through 6, 1996. However, in the earlier speeches which Langdale gave to employees on August 28 through 30, 1996, he did state, "[I]f you want to pay [dues] to the Union—that's your business. On the other hand, many people have asked how they can get out of the Union. Well, if you have any questions about how to do that it's covered by the checkoff authorization on the last page of your contract—page 55, which requires you to give the Company written notice of stopping your dues. Or you can just see Personnel." (GC Exh. 21.)

This statement does not constitute an unlawful solicitation of employees to resign from the Union or revoke their dues-checkoff authorizations. The Board has stated that it "is clear that, under Section 8(c), and employer may lawfully furnish accurate information, especially in response to employees' questions, if it does so without making threats or promises of

[5] Langdale did refer to employees paying $200 per year in union dues. (GC Exh. 24.)

benefits." *Lee Lumber & Bldg. Material*, 306 NLRB 408, 409 (1992), citing *Eagle Comtronics*, 263 NLRB 515 (1982). See also *Lee Lumber & Bldg. Material Corp*., 322 NLRB 175, 176, fn. 6 (1996). The evidence does not establish that either Langdale or Hickman unlawfully solicited employees to resign from the Union or revoke their dues-checkoff authorizations.[6] Therefore, I recommend that these allegations be dismissed.

D. The Alleged Interrogation by Supervisor Jones

Complaint paragraph 9(a) alleges that sometime between August 28, 1996, and September 6, 1996, Pole Mill Supervisor Albert Jones interrogated employees concerning their support for the Union, and solicited support for the revocation of the Union's representative status.

Employee Mizell Williams Sr. testified that on one occasion when he was in the bathroom, Supervisor Jones pointed to a sticker on Jones' hardhat and asked Williams if he wanted to wear one. This sticker displayed the word "UNION" in a circle with a slash through it. (Tr. 304–305.)

Jones admitted having such a sticker on his hard hat, but denied ever discussing it with Williams. I credit Williams.

At this time, Williams had been the Union's shop steward for about 5 or 6 years. He was actively campaigning against the decertification petition, and encouraging employees who had left the Union to return to it. (Tr. 309.) Moreover, on cross-examination, Williams testified that when Supervisor Jones asked him if he wanted a sticker Jones "was laughing, you know, laughing about it." (Tr. 308.)

In these circumstances, Jones' statement did not interfere with, restrain, or coerce Williams in the exercise of Section 7 rights, and was not unlawful. See *Rossmore House*, 269 NLRB 1176, 1177–1178 (1984). I recommend that this allegation be dismissed.[7]

E. Alleged Interrogation by Manager Stalvey

Complaint paragraph 9(b) alleges that sometime between August 28 and September 6, 1996, Trucking Manager Rodney Stalvey interrogated employees concerning their support for the Union and solicited support for the revocation of the Union's status as the employees' representative. The evidence does not establish such a violation. Therefore, I recommend that these allegations be dismissed.

F. Withdrawal of Recognition and Refusal to Bargain

Complaint paragraph 11(a) alleges that on September 6, 1996, the Respondent withdrew its recognition of the Union as the exclusive collective-bargaining representative of the employees in the unit. Respondent has denied this allegation, but admitted that on September 6, 1996, it announced that it *would* withdraw recognition when the collective-bargaining agreement expired.

Respondent has admitted the allegations in complaint paragraph 11(b), that on September 6, 1996, it canceled a bargaining session and announced its intention to refuse to bargain with the Union for a collective-bargaining agreement to succeed the one expiring at midnight, November 21, 1996. The Respondent has also admitted that it has continued to refuse to bargain with the Union.[8]

Hickman credibly testified that as of September 6, 1996, the Respondent had received petitions signed by 109 of 197 employees in the bargaining unit. The documentary evidence supports this testimony. (R. Exh. 5.) Therefore, I find that Respondent had a good-faith doubt, based upon objective evidence, that the Union continued to enjoy the support of a majority of employees in the bargaining unit.

As discussed above, I have concluded that Respondent did not commit unfair labor practices which would have interfered with, restrained, or coerced its employees in deciding whether they wanted the Union to represent them. Therefore, the petitions which the employees signed were free of unlawful taint, and the Respondent acted lawfully in refusing to negotiate a new collective-bargaining agreement with the Union, and in announcing that it would withdraw recognition from the Union upon the expiration of the collective-bargaining agreement then in effect. I recommend that these allegations be dismissed.

G. Announcement of Uilateral Changes in Wages, Benefits, and Work Rules

Complaint paragraphs 12(a), (b), and (c), as amended at the hearing, allege that on or about October 31, 1996, in meetings with employees, and in mailings to employees on or about November 8, 1996, the Respondent announced to its employees that it would raise wages by 8-percent "across the board" at the expiration of the collective-bargaining agreement then in effect, and that on January 1, 1997, it would implement a new health plan and an employee manual with workplace rules different from those in the collective-bargaining agreement. The Respondent admitted the substance of these allegations.

Because the Respondent lawfully withdrew recognition from the Union, based upon objective considerations that the Union no longer represented the majority of the unit employees, it could lawfully changes wages and benefits unilaterally, without bargaining with the Union. Therefore, I recommend that these allegations be dismissed.

[6] Even were I to credit Griffith's testimony, which I do not, I would not find that it established either an unlawful promise of wage or benefit increases, or an unlawful solicitation of employees to resign from the Union or withdraw their due-checkoff authorizations.

[7] Additionally, I do not find any causal connection between this remark and the Union's loss of majority support. *Lee Lumber & Bldg. Material Corp*., 322 NLRB at 177.

[8] The Respondent sent the Union a September 6, 1996 letter stating:

> We have been presented with a petition and other documentation signed by a majority of bargaining unit employees, in addition to other evidence of employee sentiment constituting conclusive objective proof that the United Food and Commercial Workers Union no longer represents a majority of employees at the Valdosta facility. We must therefore withdraw from bargaining, not attend the October 9, 1996 meeting, or any other meetings, concerning bargaining for a new contract. Langdale Forest Products Co. will furthermore withdraw recognition from your union effective 12:01 a.m. on November 22, 1996. Langdale, of course, will honor all of its obligations under the existing collective bargaining agreement, which expires on November 21, 1996. [GC Exh. 27.]

H. Soliciting Employees to Abandon the Union

Complaint paragraph 10 alleges that on or about November 8, 1996, by a written "Important Notice," the Respondent solicited and encouraged employees to refuse to support the Union. Respondent denied this allegation.

The evidence does not establish this allegation. Therefore, I recommend that it be dismissed.

I. Wage Increase on November 22, 1996

Complaint paragraph 12(d) alleges that effective on or about November 22, 1996, Respondent raised wages for all unit employees by 8 percent. Respondent admits the substance of this allegation.

The wage increase went into effect the day after the collective-bargaining agreement expired. Respondent lawfully had withdrawn recognition from the Union and had no duty, at this point, to bargain with it. Therefore, the wage increase was lawful. I recommend that this allegation be dismissed.

J. Other Alleged Unlawful Unilateral Changes

As amended at the hearing, complaint paragraph 12(e) alleges that on or about December 6, 1996, the Respondent notified all employees by memo that pension benefits would be doubled, effective January 1, 1996. Paragraph 12(f) alleges that sometime in mid-December 1996, the Respondent issued an employee handbook to unit employees, implemented a new complaint resolution procedure, and made other changes in rates of pay, wages, hours of work, and other terms and conditions of employment. Paragraph 12(g) alleges that on or about January 1, 1996, the Respondent increased employees' pension benefits and implemented new health insurance, life insurance, and prescription drug benefits for unit employees.

The Respondent admits the substance of all of these allegations. In view of my finding that the Respondent lawfully withdrew recognition from the Union, I conclude that Respondent had no duty to bargain with the Union before making these changes. Therefore, it acted lawfully. I recommend that these allegations be dismissed.

K. The General Counsel's Alternative Theory

The General Counsel argues that even if the evidence does not establish a violation under current precedents, the Board should overrule its previous decisions and adopt a new standard. Specifically, the General Counsel contends that the Board should hold that an employer should not be allowed to withdraw recognition from an incumbent union unless there has been a secret-ballot election in which a majority of employees voted against continued representation.

The General Counsel concedes that this position does not reflect the current law. Since the Board's current precedents bind me, it would not be appropriate for me to consider the General Counsel's arguments against these precedents.

CONCLUSIONS OF LAW

1. Langdale Forest Products Company is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. United Food & Commercial Workers Union, Local 1996, AFL–CIO is a labor organization within the meaning of Section 2(5) of the Act.

3. Langdale Forest Products Company has not engaged in conduct violative of the Act, as alleged.

On these findings of fact and conclusions of law and on the entire record in this case, I issue the following recommended[9]

ORDER

It is recommended that the complaint be dismissed in its entirety.

Dated Washington, D.C. January 15, 1998

[9] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, these findings, conclusions, and recommended Order shall, as provided in Sec.102.48 of the Rules, be adopted by the Board, and all objections to them shall be deemed waived for all purposes.